

**ILLINOIS INDEPENDENT  
TAX TRIBUNAL**

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**DAVID APPLEBY,**  
                    **Petitioner**

**V**

**ILLINOIS DEPARTMENT  
OF REVENUE,**  
                    **Respondent**

**No. 14 TT 176**  
**Chief Judge James M. Conway**

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**ANSWER**

Now comes the Department of Revenue of the State of Illinois (“the Department”) by and through its attorney, Lisa Madigan, Attorney General of the State of Illinois, and for its Answer to Taxpayer’s Petition states as follows:

1. On September 4, 2014 a Late Discretionary Hearing was granted on the NPLs, Letters, and Collection Actions set forth in the Regards block of the September 4, 2014 letter from the Chief Administrative Law Judge of the Illinois Department of Revenue. (Exhibit A

ANSWER: The Department admits that it granted a late discretionary hearing with regard to David Appleby on September 4, 2014. The Department further states that the letter granting the late discretionary hearing which is attached to the petition as Exhibit A speaks for itself and therefore denies any and all other allegations in paragraph 1 of the petition.

2. The NPLs, Collection Actions, etc. set forth in Exhibit A are attached as Exhibit B.

ANSWER: The Department states that the documents attached to the petition as Exhibits A and B speak for themselves and therefore deny petitioner's characterization and description thereof and any and all other allegations in paragraph 2 of the petition.

3. All pending actions against Petitioner relate to allegations made by the Department of Revenue that he is or was a Responsible Officer of Arlington Citgo, Inc. (later Data Shell, Inc.) The Department claimed Petitioner was responsible for sales-tax from December 2006 through 2012.

ANSWER: The Department admits that the notices of penalty liability (NPL) and 1002D Penalty notices that were the subject of the grant of a late discretionary hearing by the Department and that led to this Tribunal action, all related to a determination by the Department that Petitioner was a Responsible Officer of Arlington Citgo, Inc. (later Data Shell, Inc.) with respect to sales and use taxes, as well as income withholding taxes, for the period for December 2006 through 2012. The Department denies any and all other allegations in paragraph 3 of the Petition.

4. The Department of Revenue charged Petitioner as a "Responsible Officer" for sales taxes due in the Case No. 12 ST-0311.

ANSWER: The Department admits that it opened Case No. 12 ST 0311 in Administrative Hearings after the Petitioner protested a Notice of Penalty Liability issued to him. The Department further admits that the protested Notice involved a determination by the Department that the Petitioner was a responsible officer for certain sales and use taxes. The Department denies any and all other allegations in paragraph 4 of the petition.

5. The case was closed because Mr. Appleby's partner Mr. Antenore had been indicted by the Attorney General's office and found guilty of tax fraud. (Exhibit C) Mr. Appleby was not charged and was cleared of all involvement.

ANSWER: The Department denies the Petitioner's characterization of why Case No. 12 ST 0311 in Administrative Hearings was closed and states that affirmatively that the case was closed due to the Department's withdrawal, that is its determination to voluntarily withdraw, (i.e. cancel) the notice of penalty liability at issue without proceeding to an evidentiary hearing. The Department further admits that the Petitioner was not charged in the criminal proceeding referenced by Exhibit C to the Petition. The Department denies any and all other allegations in paragraph 5 of the petition.

6. Mr. Appleby was not a signer on the business checking account. He had no power, status, nor authority to pay sales tax. (Exhibit D)

ANSWER: The Department admits that the Petitioner was not a signer on the business checking account. The remaining allegations in paragraph 6 of the petition consist of legal and/or factual conclusions and are thus denied.

7. The case was closed against Petitioner by Order of May 9, 2014, the Illinois Department of Revenue stated that, "All proceedings before the Administrative Hearing Division of the Illinois Department of Revenue relative to this case have been concluded and this matter is therefore closed." (Exhibit E)

ANSWER: The Department admits the allegations in paragraph 7 of the petition.

8. On May 9, 2014, Administrative Law Judge Kenneth Galvin entered an Order following the Department of Revenue's withdrawal of the Notice of Penalty Liability as to David Appleby. (Exhibit F)

ANSWER: The Department admits the allegations in paragraph 8 of the petition.

9. The Order stated, "The Notice of Penalty Liability issued to David Appleby and captioned above, and all further proceedings in this case are hereby cancelled." (Exhibit F)

ANSWER: The Department admits the allegations in paragraph 9 of the petition.

10. On May 20, 2014 the Department of Revenue issued a Personally Liability Penalty Withdrawal for #760575 (\$640,485.66).

ANSWER: The Department admits the allegations in paragraph 10 of the petition.

11. The cause of action, the case, amounted to unpaid sales tax at a gas station in Arlington Heights, IL. David Appleby was a silent partner in the business. His partner was found guilty of sales tax fraud. David Appleby was not charged and had nothing to do (sic) with the tax fraud. The Department of Revenue cleared Mr. Appleby of any wrongdoing and dropped the case against him.

ANSWER: The Department admits that no criminal charges were brought against the petitioner with respect to any unpaid sales tax matters. The remaining allegations in paragraph 11 of the petition are vague and conclusionary and therefore denied.

12. The gas station itself continued to be open and operating by Mr. Antenore through 2012. He did not pay sales tax nor the mortgage.

ANSWER: The Department admits that the gas station continued to be open through 2012. The remaining allegations in paragraph 12 of the complaint are vague and conclusionary and are therefore denied.

13. A Foreclosure Action was filed in June of 2012 against the company Data Shell, Inc., Mr. Antenore, Mr. Appleby, et al. The gas station was closed in late 2012.

ANSWER: The Department admits the allegations in paragraph 13 of the petition.

14. A Judicial Sale by auction was held on March 12, 2013. (Exhibit E Repost of Sale and Distribution by Receiver)

ANSWER: The Department admits the allegations in paragraph 14 of the petition.

15. Neither Mr. Appleby, Mr. Antenore, nor Data Shell, Inc. did not receive any proceeds of the Sale. There was a deficiency of (\$243,638.80) due to the mortgage bank. (Exhibit E)

ANSWER: The Department admits the allegations in paragraph 15 of the petition.

16. Mr. Appleby's defense to the sales tax liability in 2012 is the same. He never received any profits or money from the business in 2011 or 2012. He was not involved.

ANSWER: The allegations in paragraph 16 in the petition consist primarily of legal conclusions and are therefore denied.

17. The Dismissal Orders failed to include and extinguish several liens against Mr. Appleby's home. (Exhibits A and B)

ANSWER: The Department states that the orders speak for themselves and therefore denies the conclusions and all other allegations in paragraph 17 of the petition.

18. Exhibits A and B lists all the outstanding liens and Collection Actions which are pending and did not merge with the Dismissal Orders of May 9, 2014.

ANSWER: The Department admits the allegations in paragraph 18 of the petition.

19. Mr. Appleby has no further liability arising out of this case pursuant to the May 9, 2014 Orders. (Exhibits E and F)

ANSWER: The Department states that the orders speak for themselves and therefore denies the conclusions and all other allegations in paragraph 19 of the petition.

**WHEREFORE**, the Department prays that the Tribunal enter an order:

Denying the prayer for relief in the Petitioner's Petition in its entirety and respectfully suggests that pursuant to 35 ILCS 101/1-45(e)(4) this Tribunal lacks jurisdiction to dismiss any liens or pending levy actions with respect to the Petitioner.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

I, George Foster, an attorney, do hereby certify that on October 27, 2014 a copy of the Department's ANSWER was served on Gregory J. Ellis Esq., by causing a copy to be sent by electronic mail to gregellisesq@gmail.com

A handwritten signature in blue ink, appearing to read "George Foster", is written over a horizontal line.